Filed 4/15/03 Adoption of Tatiana G. and Natalia G. CA2/6

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Adoption of TATIANA G. and NATALIA G., Minors.	2d Civil No. B161770 (Super. Ct. No. A014200) (Ventura County)
ERIC M., Plaintiff and Respondent, v. MARIO G., Defendant and Appellant.	

Mario G. appeals from an order terminating his parental rights to his daughters, Natalia and Tatiana G. He contends the trial court's order is void because his parental rights were terminated without proper notice. He also contends the trial court erred in finding that he was not the father of the children. Our review of the record reveals that the trial court made a typographical error in stating that Mario was not the biological father of the children. We modify the order terminating Mario's parental rights to reflect that he is the biological father and affirm the order in all other respects.

Facts

Mario and Diana were married in December of 1983. Their daughters, Tatiana and Natalia, were born in Bogotá, Columbia in 1988 and 1995, respectively, and resided with their parents until their marriage ended in 1998. On February 6, 2000, Diana obtained a formal judgment of dissolution of the marriage.

Following Diana's divorce from Mario, Mario returned to Colombia. He telephoned her in January of 1999 to say that he had found work, he was not returning to the United States, but would send money whenever he could. Since 1998, he has sent presents to the children occasionally at Christmas, telephoned the children three times, but has not sent money for their support.

In November of 2000, Diana married respondent Eric M.. Thereafter, in June of 2002, Eric sought permission to adopt the minors. He also filed a petition to terminate Mario's parental rights based on abandonment and Mario's failure to communicate and support the children. Diana consented to the stepparent adoption and the Ventura County Human Services Agency (HSA) investigated the matter. (Fam. Code, § 9001, subd. (a).) In June of 2002, HSA filed its report recommending approval of the stepparent adoption, providing the court found the minors legally free for adoption.

On June 27, 2002, the trial court issued a citation to Mario, directing him to "appear . . . in Department 30 . . . on 8-2-02 at 10:30 [a.m.] . . . to show cause . . . why the petition of Eric [M.] for the adoption of [Tatiana and Natalia], your minor children, should not be granted." The record on appeal shows that the citation to appear was served on Mario four different ways: (1) service by registered mail on July 16, 2002, addressed to Mario at "Transversal 14A #145-71 Apt. (103), Bogota, Colombia," with an affidavit of service signed by Eric and notarized by Alma Lopez; (2) service by regular mail on July 15, 2002, addressed to Mario at the same address with an affidavit of mailing executed by Paul Jordan; (3) personal service on Mario at "Carrera 9A #60-60, Bogota, Columbia," by Liliana Ramos Soto on July 16, 2002; and (4) delivery of a

package by DHL international courier on July 15, 2002, addressed to Mario at "Carrera 9A #60-60, Bogota, Colombia." The parties state that the package contained the citation to appear. The DHL airway bill contains an acknowledgment of delivery signed by an individual on July 17, 2002, but the signature is illegible.

On August 2, 2002, at the hearing, Eric and Diana were present, but Mario was not. The court stated, "[I]t appears that the biological father in this case has abandoned the child; is that correct?" Diana and Eric each responded, "That is correct." The couple confirmed that Mario had not sent any support or communicated with the children for about one and one-half years.

The court then stated, "I'm satisfied with the notice. The Petition is granted and the father's paternal rights are terminated as to Tatiana and Natalia." A formal order terminating Mario's parental rights was filed on August 2, 2002.

Thereafter, on August 7, 2002, HSA filed a supplemental report on the stepparent adoption. According to that report, on August 2, 2002, the social worker received a long distance telephone call from Mario who was in Brazil. He requested the assistance of a Spanish speaking social worker. An adoption worker helped translate the information requested by the father. He asked, "How can I get to see my kids?" The adoption worker gave the father the name of the trial judge, the courtroom, and the address of the court. The social worker advised him that he would be notified of a hearing date. The social worker was unaware that the hearing had been held that day and, thus, did not inform the father that his parental rights had been terminated. Because the adoption had already been approved, the court took no action on the supplemental report. This appeal followed.

Discussion

Mario contends that the order terminating his parental rights is void because it was entered without proper notice to him. (See, e.g., *In re B.G.* (1974) 11 Cal.3d 679, 688-689 [notice and an opportunity to be heard are constitutionally required prior to involuntary termination of parental rights]; *In re Melinda J.* (1991) 234

Cal.App.3d 1413, 1418 [parents are entitled to due process notice of juvenile proceedings affecting their interest in custody of their children; due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections].)

Family Code section 7822, subdivision (a) provides that a proceeding to declare a child free from parental custody and control may be brought "where the child has been left . . . by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child." Subdivision (b) of section 7822 provides that the failure to provide support or communicate "is presumptive evidence of the intent to abandon. If the parent . . . [has] made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent . . . ."

Family Code section 7881, subdivision (a) provides that notice of the proceeding shall be given by service of a citation on the father or mother of the child if the place of residence of the father or mother is known to the petitioner. Under section 7880, subdivision (c), service of the citation shall be made in the manner prescribed by law for service of civil process at least 10 days before the time stated in the citation for the hearing.

Code of Civil Procedure section 413.10 governs service of pleadings on persons residing in foreign countries.[1] This section provides that persons living in another country can be served with summons in the same way as persons living in other states, including any of the methods by which summons can be served on persons within California (i.e., personal delivery, substitute service, service by mail coupled with acknowledgment of receipt, publication, and certified registered mail), or any other method permitted by law of the country where the service was made provided the court

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[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

determines that the method used was "reasonably calculated to give actual notice." (§ 413.10, subd. (c).)[2]

Mario acknowledges that the record on appeal contains three documents that purport to be proofs of service of the citation upon him in Colombia. He contends, however, that two of the proofs of service do not comply with the Code of Civil Procedure. He correctly argues that the proof of service signed by Eric is deficient because it was signed by a party to the proceeding, in violation of section 414.10. The proof of service signed by Paul Jordan is deficient because it reflects service by regular mail without a return or acknowledgment of receipt. (See §§ 415.30, 415.40.)

The third proof of service in the record reflects that Mario was personally served with the citation to appear by Liliana Ramos Soto on July 16, 2002, a date at least 10 days prior to the hearing of August 2, 2002, as required by Family Code section 7880, subdivision (c). Her affidavit of service is provided on the form approved by the Judicial Council and sets forth the facts required by section 417.10, subdivision (a). Soto identifies her occupation on the proof of service as a "dentist and oncology oral." She states she is over the age of 18. Under section 413.40, service of summons may be made by any person who is at least 18 years old and who is not a party to the action. Her affidavit of service complies with sections 415.10 and 417.10.

Although Mario contends he did not receive actual notice of the hearing, there is no evidence in the record to support his contention. Significantly, Mario

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[2] Section 413.10, subdivision (c) provides: "Outside the United States, as provided in this chapter or as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. These rules are subject to the provisions of the Convention on the 'Service Abroad of Judicial and Extrajudicial Documents' in Civil or Commercial Matters (Hague Service Convention)."

Mario does not contend that service of the citation in this case had to comply with the rules set forth in the Hague Service Convention (an international treaty governing service of judicial documents on citizens of signatory countries). Eric observes that Colombia is not a signatory country to the Hague Service Convention. (See Fed. Rules Civ.Proc., rule 4, 28 U.S.C. [setting forth the text of the convention rules and a list of the signatory countries].)

challenges the adequacy of the service of process through this direct appeal. Had he instead raised his challenge in the trial court in the first instance through a motion to vacate the order terminating his parental rights, he could have submitted evidence in support of his contention in the form of a declaration setting forth facts showing that he was not in fact personally served. In this direct appeal, our review of the issue he raises concerning notice of the proceedings below is limited to the reporter's and clerk's transcripts. The clerk's transcript contains a valid proof of personal service signed by an individual over the age of 18 and supports the trial court's finding that Mario was given adequate notice of the proceeding.

Mario also contends the trial court erred in concluding that he was not the biological father of the children. The order terminating Mario's parental rights states in pertinent part: "On the testimony of Diana . . . and other evidence, and the court being advised in the premises, the court having found that Mario [G.] is *not* the father of the minors and is unable to identify any other possible natural father, and no person has appeared claiming to be the natural father of the minors, [¶] IT IS HEREBY ORDERED that the parental rights of Mario [G.], and any other possible natural father with reference to the minors, be terminated and that only the consent of Diana . . . the mother of the minors, is required for adoption." (Italics added.)

The record on appeal reveals that no one disputed below that Mario was the biological father of the children. Mario states he is the father and Eric agrees. The children were born during Diana's marriage to Mario, and the trial court referred to Mario during the proceedings below as the biological father. It appears, therefore, that the statement in the court's order reciting that Mario is "not" the father is a typographical or clerical error.

This court has the power to correct clerical errors in the judgment on appeal, and we elect to do so in this case by ordering the trial court clerk to strike the word "not" from line 22 of the order terminating Mario's parental rights so that the judgment will contain a finding that Mario is the biological father of the children.

Accordingly, we direct the clerk of the superior court to strike the word "not" appearing on line 22 of the court's order of August 2, 2002, terminating Mario's parental rights. As modified, the order is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Charles W. Campbell, Jr., Judge

Superior Court County of Ventura

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Eric M., in pro. per., for Plaintiff and Respondent.